

STATE OF MICHIGAN
COURT OF APPEALS

GEORGE J. WILLIAMS,

Plaintiff-Appellant,

v

FAIRLANE MEMORIAL CONVALESCENT
HOME, d/b/a FAIRLANE NURSING CENTRE,

Defendant-Appellee,

and

SOUTHFIELD REHABILITATION COMPANY,
d/b/a GREAT LAKES REHABILITATION
HOSPITAL, and LAMARR RICHARDSON,

Defendants.

UNPUBLISHED

March 13, 2007

No. 266315

Wayne Circuit Court

LC No. 04-411738-NO

Before: Servitto, P.J., and Talbot and Schuette, JJ.

PER CURIAM.

Plaintiff appeals by leave granted the trial court's grant of summary disposition in Fairlane Memorial Convalescent Home's favor. We reverse and remand for further proceedings. This case is being decided without oral argument in accordance with MCR 7.214(E).

Plaintiff filed suit alleging that defendants had caused him to be confined in two institutions without legal authorization and against his will. Against defendant-appellee Fairlane, plaintiff set forth claims of false imprisonment and intentional infliction of emotional distress. The trial court granted summary disposition to Fairlane on the ground that the cause in fact sounded in medical malpractice, and thus brought the notice and affidavit of merit requirements of MCL 600.2912b(1) to bear. This Court denied leave to appeal that decision, but our Supreme Court remanded the case to this Court for decision as on leave granted. See *Williams v Fairlane Memorial Convalescent Home*, 474 Mich 912; 705 NW2d 353 (2005).

Fairlane moved for summary disposition pursuant to MCR 2.116(C)(7) (statute of limitations), (8) (failure to state a claim), and (10) (failure to provide evidentiary support). However, the court expressly decided this case on the ground that plaintiff's claims sounded in

medical malpractice (without expressing any concerns over timing or whether plaintiff could substantiate his allegations), and that no discovery had taken place. For these reasons, it is apparent that MCR 2.116(C)(8) formed the sole basis for the court's decision.

"A motion for summary disposition under MCR 2.116(C)(8) tests the legal sufficiency of a claim by the pleadings alone. This Court reviews de novo a trial court's decision regarding a motion for summary disposition under MCR 2.116(C)(8) to determine whether the claim is so clearly unenforceable as a matter of law that no factual development could establish the claim and justify recovery" (internal citations omitted). *Smith v Stolberg*, 231 Mich App 256, 258; 586 NW2d 103 (1998). In reviewing a trial court's decision on a (C)(8) motion, this Court accepts as true all factual allegations in the claim and reasonable inferences that may be drawn from them. *Id.*

"The gravamen of an action is determined by reading the claim as a whole." *Simmons v Apex Drug Stores, Inc.*, 201 Mich App 250, 253; 506 NW2d 562 (1993). The nature of the claim is a function of the type of interest allegedly harmed. See *Id.* Malpractice is not the only tort that may arise in connection with medical practitioners. See *MacDonald v Barbarotto*, 161 Mich App 542, 549; 411 NW2d 747 (1987). The question, then, is not whether plaintiff pleaded facts that might support a claim for medical malpractice, but whether he pleaded facts that in fact supported claims for false imprisonment or intentional infliction of emotional distress.

False imprisonment occurs where an actor intentionally, and without privilege or other legal authority, causes another to be confined, such that the other person is aware of his or her confinement. *Moore v Detroit*, 252 Mich App 384, 387-388; 652 NW2d 688 (2002). In this case, plaintiff alleged that he was kept at Fairlane's facility against his will, without legal cause or justification. Plaintiff separately asserted that Fairlane's agents detained and imprisoned him without authorization or privilege. Plaintiff further alleged that Fairlane "conspired" with defendant Richardson "in confining and keeping Plaintiff against his will." Although these allegations are stated in very general terms, without specifying the dates or durations of periods of confinement, taken at face value they set forth a claim of false imprisonment. No allegation of any medical misadventure need bear on the question, and no specialized medical knowledge is needed to determine whether Fairlane in fact forcibly confined plaintiff, or whether Fairlane had any legal basis for doing so.

Fairlane points out that plaintiff alleged that its agents relied on defendant Richardson's representation of plaintiff as mentally incompetent, "rather than conducting an investigation of their own or making inquiry as to Defendant Richardson's legal status." Although the reference to investigating plaintiff's condition touches on the question of Fairlane's medical competence, not so the reference to Fairlane's failure to verify defendant Richardson's status in the matter. At best, the allegation that Fairlane failed independently to ascertain plaintiff's medical or mental condition underscored Fairlane's lack of privilege or other authority to confine plaintiff. At worst, it is irrelevant to the causes of action pleaded. In any event, that allegation does not transform these claims into a medical malpractice claim. Plaintiff need not bring a medical expert to show that he was forcibly confined, or that defendant Richardson, and thus Fairlane, lacked authority to commit him. Accordingly, we conclude that the trial court erred in dismissing the false imprisonment claim based upon MCR 2.116(C)(8).

We additionally conclude that the claim of intentional infliction of emotional distress was well enough pleaded to avoid dismissal on the (C)(8) motion. To prevail on that theory, the plaintiff must show that the defendant intentionally or recklessly engaged in extreme and outrageous conduct that proximately caused the plaintiff to suffer severe emotional distress. *Haverbush v Powelson*, 217 Mich App 228, 234; 551 NW2d 206 (1996). “Liability for such a claim has been found only where the conduct complained of has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency and to be regarded as atrocious and utterly intolerable in a civilized community.” *Id.* The complained-of conduct must be so horrendous as to cause an ordinary member of the community “to exclaim, ‘Outrageous!’” Restatement Torts, 2d, § 46, cmt d, pp 72-73, quoted approvingly in *Roberts v Auto-Owners Ins Co*, 422 Mich 594, 603; 374 NW2d 905 (1985).

Whether the conduct in question is extreme and outrageous is initially a question for the court. See *VanVorous v Burmeister*, 262 Mich App 467, 481; 687 NW2d 132 (2004). In this case, further factual development could show that Fairlane acted with sufficient aggression and malice, and confined plaintiff for sufficient time, as to have acted outrageously.

We accordingly reinstate plaintiff’s claims against Fairlane, and remand this case to the trial court for further proceedings. We express no opinion on the likely merits of any renewed motions for summary disposition that may arise upon further factual development.

Reversed and remanded. We do not retain jurisdiction.

/s/ Deborah A. Servitto
/s/ Michael J. Talbot
/s/ Bill Schuette